




OFFICE OF
INSURANCE COMMISSIONER

MEMORANDUM

TO: Market Analysis Interested Parties

FROM: Jim Odiorne 

DATE: April 6, 2006

RE: Response to comments on Sections 7, 8, and 9 of Z Draft

The Office of the Insurance Commissioner (OIC) is a state regulatory agency whose mission is to protect consumers, the public interest, and our state's economy through fair and efficient regulation of the insurance industry.

Thank you once again to all who provided comments. The comments, as they were received, are attached for your review. We are reviewing the comments internally and with the assistance of verbal comments next week, some comments are likely to be included in a revised draft.

At our meeting on February 23, 2006, we proposed an admittedly aggressive schedule for our review, which none of the interested parties objected to. That schedule calls for interested parties to submit comments to Jim Odiorne (JimO@oic.wa.gov) by noon on designated days. Comments sent elsewhere in OIC eventually get to me but take resources from other areas. Late arriving comments also adversely impact our resources and hamper our ability to meet our part of the schedule.

In my response to comments on sections 1-4, dated March 10, 2006, I included:

Also not included in Sections 1-4 of the Z Draft were comments on alternative dispute resolution and complete domestic deference. At this time, it is highly unlikely that such provisions will be included in the Commissioner's request legislation, and it is highly likely that any attempt to include those issues will be strongly resisted.

Nothing has changed on those issues, but if it does we will let you know. We have heard the issue, but, for now, I don't see the benefit of burdening our limited time with a re-hashing of those issues.

Please review my March 23, 2006 response, paragraph five, for our position on access to insurer information. That position has not changed.

We believe that it is very important to issue a report on examinations, except in unusual circumstances. Those reports are key to continued public protection, public confidence in this office, and public confidence in the insurance industry. We fully understand that those reports, like those issued under current law and examination procedures, cannot include confidential or privileged information.

There may have been a time when examination reports were "negotiated" with the entity being examined. The Commissioner has made it very clear to me that examination reports are his factual account of the conditions in an insurer's operations. Insurers are given an opportunity to submit evidence to support a need to correct factual content of an examination report, but insurers are not, will not, be given an opportunity to modify critical or uncomplimentary report language.

We really appreciate those comments that include suggested changes to our Z draft language. Those types of comments help us understand your position, and allow us to be better prepared to react to your verbal comments.

I look forward to our face-to-face discussion at 1:30pm on April 12. If you plan to participate by conference call, please notify Susan Miller at SusanM@oic.wa.gov by noon on Tuesday, April 11.

Jim Odiorne

From: Beth Berendt
Sent: Wednesday, April 05, 2006 9:21 AM
To: Jim Odiorne; Susan Miller
Subject: FW: WA Market Conduct Analysis Z Draft - NAMIC's comments to Sections 7, 8 and 9



WA Market Conduct
Analysis Com...

-----Original Message-----

From: Christian Rataj [mailto:crataj@namic.org]
Sent: Wednesday, April 05, 2006 9:16 AM
To: Beth Berendt
Subject: WA Market Conduct Analysis Z Draft - NAMIC's comments to Sections 7, 8 and 9

Beth: Enclosed please find NAMIC's Comments to Sections 7, 8 and 9 of the "Z Draft".
Thanks for your time and assistance. CJR

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April 5, 2006

The Honorable Mike Kreidler
Insurance Commissioner
State of Washington
5000 Capitol Way
Tumwater, Washington 98501

sent via email to:
BethB@OIC.WA.GOV

**Re: NAMIC's Comments on Market Conduct Surveillance Model Act
Sections 7, 8 and 9 of "Z draft"**

Dear Commissioner Kreidler:

Thank you for affording the National Association of Mutual Insurance Companies (NAMIC) and members of the insurance industry an opportunity to provide you with a statement of our thoughts and concerns in regard to the above captioned sections of the proposed Market Conduct Surveillance Model Act.

NAMIC is a full-service national trade association with more than 1,400 member companies that underwrite approximately 43 percent (\$196 billion) of the property/casualty insurance premium in the United States. NAMIC membership includes four of the seven largest property/casualty insurance carriers in the nation, and every size regional, national and state specific property/casualty insurer, including hundreds of farm mutual insurance companies. NAMIC has 110 member insurance carriers doing business in the state of Washington, who write approximately 31% of the property/casualty insurance business in the state.

On behalf of NAMIC, I respectfully submit the following comments on Sections 7, 8 and 9 of the proposed draft legislation ("Z Draft") which has been distributed by your staff for industry feedback.

Section 7 of the "Z Draft"

NAMIC is concerned with the following aspects of Section 7 (1):

Section 1 states, "[w]hen the commissioner determines that other market actions identified in Section 5(4)(a) of this act are not appropriate, the commissioner has the discretion to conduct on-site market conduct examinations"

In the interest of promoting uniformity and consistency in the application of market conduct examinations, NAMIC requests that the OIC consider adding a provision that sets forth the standard of review and the factors the commissioner must consider when determining whether other market actions identified in Section 5(4)(a) of this act are not appropriate.

Specifically, the commissioner should be required to demonstrate that the OIC's market analysis identified a pattern of conduct or practice by the insurer which requires further investigation. Further, the OIC should be required to provide a detailed statement as to why the commissioner believes that other market conduct actions identified in section 5 (4)(a) are not appropriate.

NAMIC is concerned with the following aspect of Section 7(2):

This section states that "the commissioner may accept an examination report of another state provided that the state has a market surveillance system the commissioner deems comparable to the market regulation and surveillance system set forth in this law."

NAMIC is concerned that this provision: 1) does not specifically state that the commissioner shall coordinate the examination with the insurance commissioner of the state in which the insurer is organized; 2) does not list the market surveillance elements the commissioner will consider when determining whether another state's market surveillance system is comparable; and 3) does not articulate a procedure for a carrier and/or a commissioner of another state to dispute the commissioner's determination that the other state's market surveillance system is not comparable.

Reasonable steps need to be taken to ensure that carriers are not being required to pay for unnecessary and duplicative market conduct examinations. If data and information from another state's market conduct action could be used to expedite the OIC's analysis and save the insurer from having to pay for another market conduct examination, the OIC should be required to use said documentation and information. The commissioner should be required to articulate the factual and legal basis for his/her determination that the data and information that could be derived from another state's market conduct examination is not an acceptable substitute to undertaking another full-scale market conduct examination.

NAMIC is concerned with the following aspect of Section 7 (3):

Since Section 7 (3) does not specifically require the commissioner to provide an insurer with notice of its intention to expand the scope of market conduct examination beyond what was initially identified in the "work plan", NAMIC suggests adding the following language to this section of the regulation:

If a targeted examination is expanded beyond the reasons provided to the insurer in the notice of the examination required under this Section, the Commissioner shall provide written notice to the insurer, explaining the extent of the expansion and the reasons for the expansion. The department shall provide a revised work plan to the insurer before the beginning of any significantly expanded examination.

NAMIC is concerned with the following aspect of Section 7 (6):

In an effort to clarify the requirement that the OIC shall use the NAIC Standard Data Request, NAMIC suggests adding the following language to the end of this provision:

(or successor product, adopted by regulation, that is substantially similar to the foregoing NAIC product).

NAMIC suggests the following addition to Section 7 (7):

At the end of the paragraph, please add: "The examination will be conducted by the domicile state which if accredited will represent all states within the NAIC zone. Cost of the examination will be born by the state in accordance with RCW 48.03.060. If the state staffing limitations cause a need to use qualified contract examiners then the cost of those examiners hourly rate will be born by the state consistent with the intent of RCW 48.03.060."

NAMIC is concerned with the following aspect of Section 7 (8):

In order to streamline the market conduct examination process and so as to afford insurers with a reasonable period of time to prepare for the examination, NAMIC suggests that the "pre-examination conference" be conducted no later than thirty (30) days prior to the commencement of the examination.

NAMIC is concerned with the following aspect of Section 7 (10):

This section does not specifically set forth a procedure that provides an insurance carrier an opportunity to: 1) review and respond to a draft copy of the examination report; 2) "informally" resolve any problems identified during the market conduct examination and 3) formally contest the findings stated in the report.

Since the stated purpose of the proposed Market Conduct Surveillance Model Act is to "remedy significant market problems" so as to protect insurance consumers from inappropriate market conduct practices, it makes sense to afford insurance carriers an

opportunity to work closely with the commissioner to promptly and “informally” resolve disputes between the insurer and the OIC that have arisen during the course of the market conduct examination. Thus, Section 7 (10) should include the following industry supported provisions:

If the Commissioner elects to issue a report, a draft examination report shall be delivered to the insurer within sixty (60) days of the completion of the examination. Completion of the examination shall be defined as the date the Commissioner confirms in writing that the examination is completed.

The insurer must respond with written comments within 30 days of receipt of the draft report.

The department shall make a good faith effort to resolve issues informally and where the Commissioner determines that such examination report is required, shall prepare a final report within 30 days of receipt of the insurer’s written comments, unless a mutual agreement is reached to extend the deadline.

The commissioner shall make corrections and other changes, as appropriate to reflect resolution of disputed matters, and shall issue the report to the insurer. The insurer shall, within 30 days, accept the final report, accept the findings of the report, file written comments, request an alternative dispute resolution under Section __ or request a hearing. An additional 30 days shall be allowed if agreed to by the Commissioner and the insurer. Any such hearing request must be made in writing and must follow [insert reference to appropriate administrative procedure act].

States shall include the company’s response in the final report. The response may be included as an appendix or in the text of the examination report. The company is not obligated to submit a response. Individuals involved in the examination should not be named in either the report or the response except to acknowledge their involvement.

NAMIC is concerned with the following aspect of Section 7 (11):

Section 11(a) does not place any cost-control limitations on facilitating the market conduct examination. It is clearly in the financial interest of the OIC, insurers, and insurance consumers for reasonable cost-control guidelines to be implemented to make sure that the market conduct examination process does not create an economic burden on insurers and cause insurance rates to increase for consumers.

Consequently, NAMIC suggests adding the following industry supported provisions to Section 7 (11):

The Commissioner may contract in accordance with applicable state contracting procedures, for such qualified contract actuaries and examiners as the Commissioner deems necessary due to the unavailability of qualified regular state employees to conduct a particular examination; provided that the compensation and per diem allowances paid to such contract persons shall not exceed one hundred twenty-five percent (125%) of the compensation and per diem allowances for examiners set forth in the guidelines adopted by the National Association of Insurance Commissioners.

An insurer may not be required to provide reimbursement for examination costs and fees under Subsection (1), whether those costs and/or fees are incurred by market conduct surveillance personnel or qualified contract examiners, to the extent that those costs and/or fees exceed the costs and/or fees prescribed in the Market Conduct Examiners Handbook and any successor documents to that Handbook unless the Commissioner demonstrates that the costs and/or fees prescribed in the Handbook are inadequate under the circumstances of the examination

Section 8 of the "Z Draft"

NAMIC is concerned with the following aspect of Section 8 (2):

NAMIC is concerned that the phrase "shall cause . . . the details of such model or product to be made available to such personnel" is overly broad and will create an unnecessary administrative burden for insurers. If the purpose of this provision is to allow the examiner an opportunity to procure information about the validity and accuracy of the third-party model or product, the following suggested amendment would accomplish that objective and not create such a labor intensive task for the carrier:

"An insurer using a third-party model or product for any of the activities under examination shall, upon request of the market regulation personnel, support the validity and accuracy of the model or product's output."

NAMIC is concerned with the following aspect of Section 8 (4):

In order to provide insurance carriers with confidentiality protections necessary for them to comply with the market conduct examination process, Section 8 (4), line 37 of page 9, needs to be amended as follows:

“No waiver of any applicable privilege or claim of confidentiality in the documents, materials or information shall occur as a result of disclosure to the commissioner, *any employee of the OIC, any agent retained by the OIC to assist in the market conduct examination, and/or any party retained to facilitate alternative dispute resolution pertaining to a contested examination fee and/or dispute over the retention of a particular contract examiner selected by the OIC* under this chapter.” [Italicized section denotes amendment to language of proposed provision].

NAMIC is concerned with the following aspect of Section 8 (6)(a):

Section 8 (6)(a) states “the commissioner may:

(a) Share documents, materials or other information, including the confidential and privileged documents, materials or information subject to subsection (1) of this section, with other state, federal and international regulatory agencies and law enforcement authorities and the NAIC and its affiliates and subsidiaries, provided that the recipient agrees to and has the legal authority to maintain the confidentiality and privileged status of the document, material, communication or other information;”

Since protecting confidential, proprietary and privileged information is of paramount importance to insurance carriers, NAMIC suggests that the aforementioned provision be amended to ensure that the recipients of the confidential insurer information have the technical ability to safeguard the insurer’s confidential information. Thus, NAMIC suggests the following changes to the provision:

“Share documents, materials or other information, including the confidential and privileged documents, materials or information subject to subsection (1) of this section, with other state, federal and international regulatory agencies and law enforcement authorities and the NAIC and its affiliates and subsidiaries, provided that the recipient agrees to, *has the legal authority to, and the technical ability to* maintain the confidentiality and privileged status of the document, material, communication or other information.” [Italicized section denotes amendment to language of proposed provision].

NAMIC is concerned with the following aspect of Section 8 (6)(c):

In light of the importance associated with protecting confidential insurer information, NAMIC suggests the following amendment to Section 8 (6)(c):

“Enter into agreements governing the sharing, *protection* and use of information consistent with this subsection.” [Italicized section denotes amendment to language of proposed provision].

Section 9 of the "Z Draft"

NAMIC is concerned with the following aspect of Section 9 (2):

Since the fundamental purpose of this section is to safeguard the confidential nature of information, documents and data collected, disclosed and/or generated as part of the market conduct examination, Section 9 (2) needs to be amended to protect insurers from having confidential information referenced in "final" market conduct examination reports from being subject to discovery and/or admissible in evidence in any private civil action. The current language of this section could be interpreted to mean that only confidential information, documents and data referenced in a "preliminary or draft market conduct examination report" are protected as confidential. Therefore, this section needs to be amended to read as follows:

"If the commissioner elects to issue a final report of an examination, and/or a preliminary or draft market conduct examination report, said report(s) is/are confidential and not subject to disclosure"

NAMIC is concerned with the following aspect of Section 9 (4):

Since an insurance carrier is not required to perform a self-evaluative audit, the carrier should not be compelled to disclose the results of its internal audit. Therefore, NAMIC believes that this section should be amended to read as follows:

Notwithstanding the provisions of this section, no insurer shall be compelled to disclose a self-audit document or waive any statutory or common law privilege, but may voluntarily disclose such document to the Commissioner in response to any market conduct action or examination as provided in this section. For purposes of this subsection, "self-audit document" means a document that is prepared as a result of or in connection with an insurance compliance audit.

Thank you for affording NAMIC and the insurance industry an opportunity to provide comments on Sections 7, 8 and 9 of the proposed "Z Draft". I look forward to working with you and the rest of the insurance industry on drafting this legislation.

Respectfully,

Christian John Rataj, Esq.
NAMIC Western State Affairs Manager

Jim Odiorne

From: Beth Berendt
Sent: Wednesday, April 05, 2006 9:24 AM
To: 'Christian Rataj'
Cc: Jim Odiorne
Subject: RE: WA Market Conduct Analysis Z Draft - NAMIC's comments to Sections 7, 8 and 9

Thanks Christian - In the future would you please also send these to Jim Odiorne? I've forwarded them on to him.

We appreciate your turning your remarks around quickly - and a new draft reflecting last week's meeting will be posted soon.

Beth Berendt
Deputy Insurance Commissioner
Washington State Office of Insurance Commissioner
PO Box 40255
Olympia, WA 98504-0255

(360) 725- 7117

bethb@oic.wa.gov

-----Original Message-----

From: Christian Rataj [mailto:crataj@namic.org]
Sent: Wednesday, April 05, 2006 9:16 AM
To: Beth Berendt
Subject: WA Market Conduct Analysis Z Draft - NAMIC's comments to Sections 7, 8 and 9

Beth: Enclosed please find NAMIC's Comments to Sections 7, 8 and 9 of the "Z Draft".
Thanks for your time and assistance. CJR

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Jim Odiorne

From: Pelovitz, Betsy [BPelovitz@ahip.org]
Sent: Wednesday, April 05, 2006 11:48 AM
To: Jim Odiorne
Cc: Jones, Christian; Beth Berendt; sorensen@carneylaw.com
Subject: AHIP Comment Letter on Sections 7, 8 and 9 of OIC Z draft on Market Conduct

Deputy Commissioner Odiorne-

Please accept the attached written comments on behalf of America's Health Insurance Plans (AHIP) regarding the sections 7, 8 and 9 of the Office of the Insurance Commissioner's z-draft on market conduct.

Feel free to contact me with any questions.
Thank you.
Betsy

Betsy M. Pelovitz
Regional Director, State Advocacy
America's Health Insurance Plans
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April 5, 2006

Deputy Commissioner James Odiorne
Washington State Office of the Insurance Commissioner
5000 Capitol Way
Tumwater, Washington 98501

Re: Market Conduct Surveillance Model Act
Sections 7, 8 and 9 of Z draft

Dear Deputy Commissioner Odiorne:

On behalf of America's Health Insurance Plans (AHIP), we appreciate the opportunity to comment on the Office of the Insurance Commissioner's (OIC's) efforts to develop a legislative proposal for a Market Conduct Surveillance Model Act. AHIP is the national trade association representing nearly 1,300 member companies providing health insurance coverage to more than 200 million Americans.

We appreciate the OIC's efforts to adopt language that incorporates the uniform standards developed by the National Association of Insurance Commissioners (NAIC) and the National Council of Insurance Legislators (NCOIL) with respect to state market analysis and market conduct programs. Please accept this correspondence in response to your request for comments on sections 7, 8 and 9 of the OIC's Z draft. Our suggested deletions are highlighted with ~~striketrough text~~ and our requested additions are highlighted in underlined text. Thank you for time and consideration of these comments.

Section 7 – On-Site Market Conduct Examinations

We suggest a modification of subsection 1 of section 7 of the OIC's z-draft to clarify that on-site, targeted examinations should be pursued when market analysis identifies a pattern of conduct which requires further action. This additional language supports the goals of regulatory reform to conserve and focus resources on general business practices and makes this subsection consistent with subsection 1 of section 6, which requires market conduct actions to focus on the general business practices and compliance activities of insurers.

When market analysis identifies a pattern of conduct or practice by an insurer which requires further investigation and ~~When the commissioner determines that other market actions identified in section 5(4)(a) of this act are not appropriate, the commissioner has the discretion to conduct on-site market conduct examinations in accordance with the NAIC market conduct uniform examination procedures and the NAIC market conduct examiner's handbook.~~



We note that the language incorporated into subsection 2 mirrors the current language found in RCW § 48.03.010(4) and we question whether separate statutory requirements are necessary. We recommend incorporating a reference to current law into the z-draft or, in the alternative, that a repeal of RCW § 48.03.010(4) be incorporated into OIC's z-draft to eliminate duplicate requirements and the potential for confusion should one, but not both, sections be modified in the future. We also would encourage amending the discretionary standard provided under this section from a "may" to a "shall" standard to provide clear standards on when deference will be accorded to another regulator. We respectfully note that a broad deference standard is critical to the national regulatory reform efforts that seek to bring efficiencies to the market conduct process and to enhance collaboration and coordination among the states. Finally, we suggest that a clarification be added to the current requirements of RCW §48.03.010(4) to clarify its application only to financial examinations and not market conduct examinations. What follows is our suggested modification of subsection 2 to incorporate a broader deference standard that requires coordination with a foreign insurer's domestic regulator.

(2)(a) In lieu of an examination of a foreign or alien insurer licensed in this state under this chapter, the commissioner ~~may~~ shall accept an examination report of another state provided that the state has a market surveillance system the commissioner deems comparable to the market regulation and surveillance system set forth in this law.

NEW (b) The Commissioner's determination under subsection (2)(a) is discretionary with the Commissioner and is not subject to appeal.

NEW (c) The Commissioner is responsible for conducting market conduct examinations on insurers domiciled in the state. The Commissioner may delegate that responsibility to the Commissioner of another state, provided such Commissioner agrees to accept the delegated responsibility. If the Commissioner elects to delegate responsibility for examining an insurer, the Commissioner shall accept a report of the examination prepared by the Commissioner to whom the responsibility has been delegated.

NEW (d) If the insurer to be examined is part of an insurance holding company system, the Commissioner may also seek to simultaneously examine any affiliate of the insurer under common control and management which are licensed to write the same lines of business in this state, provided the affiliate and the Commissioner of their state of domicile consent to such examination.

We recommend the following technical modification to subsection 3(c) of section 7 to remove the reference to "targeted." We note that the z-draft uses the defined term "on-site examination" to described targeted examinations conducted at the insurer's home office or the location where the records under review are stored. In addition, the other sub-parts of subsection 3 also use the term "on-site examination" rather than "targeted, on-site examination."

The justification for the ~~targeted~~, on-site examination;

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We respectfully request the inclusion of language that sets forth the different triggers for a targeted examination. This enhances the transparency of the regulatory process and provides notification to the marketplace of the different measures that will be relied upon for calling an on-site examination.

NEW (TBD) The causes or conditions, if identified through market analysis, that may trigger a targeted examination are:

(A) information obtained from a market conduct annual statement, market survey or other report of financial examination indicating potential fraud, that the insurer is conducting the business of insurance without a license or is engaged in a potential pattern of unfair trade practice in violation of Washington State law.

(B) a number of justified complaints against the insurer or a justified complaint ratio sufficient to indicate potential fraud, that the insurer is conducting the business of insurance without a license or is engaged in a potential pattern of unfair trade practice in violation of Washington State law. For purposes of this subsection, a complaint ratio shall be determined for each line of business.

(C) information obtained from other objective sources, such as published advertising materials, indicating potential fraud, that the insurer is conducting the business of insurance without a license or is engaged in a potential pattern of unfair trade practice in violation of Washington State law.

We suggest the following technical amendment to subsection 7 to acknowledge potential successor products to the NAIC examination tracking system.

Announcement of the examination shall be sent to the insurer and posted on the NAIC's examination tracking system, or its successor NAIC product, as determined by the commissioner, as soon as possible but in no case later than sixty days before the estimated commencement of the on-site examination, except where the exam is conducted in response to extraordinary circumstances as described in subsection 6(2)(a) of this act. The announcement sent to the insurer shall contain the examination work plan and a request for the insurer to name its examination coordinator.

We recommend that a timeframe be added to subsection 8 for conducting the pre-examination conference to clarify expectations and provide an opportunity for a dialogue about the examination and its accompanying data requests. Our suggestion is that this meeting should take place no later than 30 days prior to the commencement of the examination.

The commissioner shall conduct a pre-examination conference with the insurer examination coordinator and key personnel to clarify expectations no later than thirty (30) days before commencement of the examination.

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We support the establishment of clear expectations and guidelines for the process that will be followed at the conclusion of an examination. In addition, we note that transparency and notice are critical components of an effective market examination process to provide all parties with the opportunity to engage in a dialogue about disputed issues. In addition, we suggest that an informal process be incorporated to encourage resolution of disputed issues without the need for a formal hearing process. We note that administrative hearings tend to be adversarial in nature, costly, and lengthy and therefore request the inclusion of the following amendments to subsection 10. Recognizing that this recommendation may also require changes to chapter 48.03 RCW, we encourage the OIC to consider making the necessary amendments to the current procedures established under Washington law.

- (a) The commissioner shall adhere to the requirements of chapter 48.03. RCW concerning issuance of market conduct examination reports, unless a mutual agreement is reached with the insurer to modify the timeframe.*
- (b) The insurer's response shall be included in the commissioner's order adopting the final report as an exhibit to the order. The insurer is not obligated to submit a response. Individuals involved in the examination should not be named in either the report or the response except to acknowledge their involvement.*
- (c) The insurer must respond with written comments within 30 days of receipt of the draft report.*
- (d) The department shall make a good faith effort to resolve issues informally and where the commissioner determines that such examination report is required, shall prepare a final report within 30 days of receipt of the insurer's written comments.*
- (e) The commissioner shall make corrections and other changes, as appropriate to reflect resolution of disputed matters, and shall issue the report to the insurer. The insurer shall, within 30 days, accept the final report, file written comments, request an alternative dispute resolution under this Act or request a hearing. An additional 30 days shall be allowed if agreed to by the Commissioner and the insurer. Any such hearing request must be made in writing.*

We believe that one of the critical components to an effective market regulatory process is disclosure and transparency. In furtherance of this objective, we request that a provision be added to the z-draft that requires the disclosure of the reasons for an expansion of an on-site examination when an extension of an investigation occurs.

NEW (TBD) If an on-site examination is expanded beyond the reasons provided to the insurer in the notice of the examination required under this act, the Commissioner shall provide written notice to the insurer, explaining the extent of the expansion and the reasons for the expansion. The department shall provide a revised work plan to the insurer before the beginning of any significant expanded examination.

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We respectfully note that subsection 11 of the OIC's z-draft and the current requirements outlined in RCW § 48.03.060 do not address the conditions under which independent contract examiners will be used and the amount of reimbursement for such examiners. We encourage the establishment of guidelines for the fees paid to independent examiners and monitoring these individuals to ensure that market conduct examinations are carried out efficiently. Due to the fact that contract examiners are usually paid on an hourly basis and reimbursed for any food and lodging expenses that they incur during an examination, these examiners have an incentive to lengthen the examination process in order to earn the highest fees possible. This can result in huge examination fees for which insurers are required to reimburse the state. In one case, an insurer was assessed fees of over \$2 million for a market conduct examination that found no violations or wrongdoing by the company. What follows is our suggested language to provide the necessary oversight and fee limitations for independent contract examiners. We recommend that these provisions be added to subsection 11.

NEW (d) The Commissioner may contract in accordance with applicable state contracting procedures, for such qualified contract actuaries and examiners as the commissioner deems necessary due to the unavailability of qualified regular state employees to conduct a particular examination; provided that the compensation and per diem allowances paid to such contract persons shall not exceed one hundred twenty-five percent (125%) of the compensation and per diem allowances for examiners set forth in the guidelines adopted the NAIC.

NEW (e) An insurer may not be required to provide reimbursement for examination costs and fees, whether those costs and/or fees are incurred by market conduct surveillance personnel or qualified contract examiners, to the extent that those costs and/or fees prescribed in the Market Regulation Handbook and any successor documents to that Handbook unless the Commissioner demonstrates that the costs and/or fees prescribed in the Handbook are inadequate under the circumstances of the examination.

Section 8 – Access to Records and Information

We respectfully note that the commissioner is granted the authority to share information with and receive data from “international regulatory agencies” under subsection 6. However, there is no definition of what entities would be considered “international regulatory agencies” that have jurisdiction and an interest in state regulated insurance issues. We recommend that this be clarified by adding a definition of this term to section 4 of the z-draft.

Section 9 - Confidentiality

We request the following amendment to subsection 2 to clarify that the preliminary or draft market conduct examination report is confidential and not subject to discovery or admissible in evidence in any private action.

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If the commissioner elects to issue a report of an examination, a preliminary or draft market conduct examination report is confidential and not subject to disclosure by the commissioner nor is it subject to subpoena or discovery. This information is not subject to discovery or admissible in evidence in any private action. This subsection does not limit the commissioner's authority to use a preliminary or draft market conduct examination report and related information in furtherance of any legal or regulatory action, or to release it in accordance with the provisions of RCW 48.02.065.

As noted in our prior correspondence, we also request the inclusion of language in the Model to clarify that the references to insurer self-evaluations should not be construed to require disclosure of otherwise confidential or privileged materials. In order to engage in a meaningful self-evaluation, health plans and insurers must review sensitive internal operations. Reviews often include privileged legal advice from lawyers; confidential information, including financial and health information from enrollees; complaint information by and about providers; and peer-review materials and other documents that may be covered under a number of privileges, including attorney-client and trade secret privileges. In addition, many documents included as part of the review may contain confidential information about third parties, including health care providers and patients. Therefore, we suggest that the following language be incorporated as a new provision under subsection 9:

NEW (5) Notwithstanding the provisions of this section, no insurer shall be compelled to disclose a self-evaluation document or waive any statutory or common law privilege, but may voluntarily disclose such document to the commissioner in response to any market action or examination.

Thank you for the opportunity to provide comments on this matter and we look forward to continuing to work with the OIC on this legislative proposal. Please feel free to contact us with any questions or concerns.

Sincerely,

A handwritten signature in cursive script that reads "Betsy M. Pelovitz".

Betsy M. Pelovitz
Regional Director

cc: Melvin Sorenson, Carney Badley Spellman, PS

Jim Odiorne

From: AWHP [AWHP@comcast.net]
Sent: Wednesday, April 05, 2006 11:57 AM
To: Jim Odiorne
Cc: Beth Berendt
Subject: Mkt Analysis Z-Draft Sections 7, 8, 9 Comments



Jim

Thank you for the opportunity to provide AWHP's comments (attached) regarding Sections 7, 8 & 9 of the OIC's Market Analysis Z-Draft bill.

Please don't hesitate to give me a call (425-396-5375) if I can answer any questions, or if you would like to discuss.

Sydney

Association of Washington Healthcare Plans
Sydney Smith Zvara, Executive Director
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4/5/2006



The Association of Washington Healthcare Plans

April 5, 2006

Sent via E-Mail & U.S. Postal Service

Jim Odiorne
Deputy Insurance Commissioner
Washington State Office of Insurance Commissioner
PO Box 40255
Olympia, WA 98504-0255

Re: Market Analysis Z-Draft
Sections 7, 8 & 9

Dear Jim,

On behalf of AWHP's member healthcare plans, we appreciate the opportunity to comment on the Office of Insurance Commissioner's (OIC's) efforts to develop a legislative proposal for Market Regulation and Surveillance. We would like to note, initially, that the overall reservations we have previously expressed regarding the need for and scope of the legislative proposal continue to apply. We also continue to be concerned that the proposed draft will not replace existing market conduct examinations but rather will overlay the current structure with yet another process for examining carriers' market practices.

As part of our review of Sections 7, 8 & 9 we note they contain several references to Market Conduct Examination costs being billed to insurers, however examinations are currently funded through insurer assessments. We respectfully request that you remove the language related to billing insurers, which would impose new and unexpected cost burdens on them.

The Z-Draft also contains several references to OIC using outside consultants, as does existing law. Based on OIC statements however, it is our understanding the commissioner will not use outside consultants for Market Conduct Examinations. Accordingly, we suggest removing these references. If however, OIC plans to use outside consultants, we suggest clarifying when they would be used and establishing reasonable cost limits --- as further detailed in our Section 7 comments.

In accordance with the OIC's Market Analysis Project schedule, we offer the following additional comments and suggestions regarding Sections 7, 8 & 9 of the proposed draft, for your consideration.

Section 7-- On-Site Market Conduct Examinations

It is unclear how Subsection (1) fits with the Market Analysis strategy. We suggest adding language clarifying whether the commissioner intends to use additional staff to conduct a greater number of periodic or regular examinations, or increase frequency of insurer examinations. Subsection (1) should also be clarified to state that on-site targeted examinations should be pursued when market analysis identifies a pattern of conduct which requires further action.

Important efficiencies are gained by eliminating duplicative state examinations of foreign or alien insurers licensed in Washington. In support of this goal, we recommend amending Subsection (2) to state that the Washington OIC will conduct this coordination with the Commissioner of the state in which the insurer is organized.

We suggest revising Subsection (3) to indicate that OIC prepare a work plan for all market conduct examinations, not only for those conducted on-site. We are also in agreement with comments submitted by AHIP that encourage inclusion of language that sets forth the different triggers for a targeted examination, thus enhancing the transparency of the regulatory process.

Subsection (7) should be modified to acknowledge potential successors to the NAIC examination tracking system.

We also suggest establishing clear expectations and guidelines in Subsection (8) for the process that will be followed at the conclusion of an examination. In further support of disclosure and transparency, we recommend adding language to Section 7 to require disclosure of the reasons for any expansion of an on-site examination when an extension of an investigation occurs.

Addition of a specified timeframe to Subsection (8) would help clarify pre-examination expectations and data requests.

Consistent with our suggestion to remove all references related to billing insurers for Market Conduct Examinations because these examinations are funded through insurer assessments, we suggest deleting the first and last sentences of Subsection (11) (a).

While we understand the OIC is not planning to use outside contractors to conduct Market Conduct Examinations, if this provision is to remain in the Z-Draft --- we suggest amending Subsection (11) (b) & (c) to limit costs for outside contractors to no more than 125% of those for the commissioner's own examiners.

Section 8-- Access to Records and Information

Subsection (1) states the OIC "shall have free, convenient access to all books, records, employees, officers, and directors, as practicable, of the insurer during regular business hours". We suggest adding language that clarifies that any interviews with insurer staff be appropriate and coordinated with insurer's examination coordinator in accordance with protocol established in Section 7.

Subsection (2) language seems overly broad. It is problematic for an insurer using a third-party model or product, or who may be operating under a non-disclosure agreement that precludes disclosure of proprietary details of the model or product. We suggest adding language to clarify parameters and provide specifics.

We also suggest adding language to Subsection (4) clarifying that "No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information shall occur as a result of disclosure to the commissioner under this chapter", unless otherwise provided by law.

Subsection (6) references "international regulatory agencies", however no definition is provided in the Z-Draft. We recommend adding a definition, as well as clarifying any such entity's jurisdiction in state regulated insurance issues.

Section 9– Confidentiality

We strongly suggest Subsection (2) be modified to clarify that the preliminary or draft market conduct examination report is confidential and not subject to discovery or admissible in evidence in any private action. RCW 42.56.400 should also be amended to confirm that these particular examination materials are exempt from disclosure under the public disclosure act.

Language should also be added to Section 9 to clarify that references to insurer self-evaluations should not be interpreted as requiring disclosure of otherwise confidential or privileged materials.

Again, we appreciate the opportunity to provide our comments and suggestion, and hope they will be of assistance.

Sincerely,

Sydney Smith Zvara
Executive Director

Jim Odiorne

From: Ken Cooley [ken.cooley.cxix@statefarm.com]
Sent: Wednesday, April 05, 2006 12:02 PM
To: Beth Berendt; Jim Odiorne; Susan Miller
Subject: Comments on Section 7, 8 & 9 of Z Draft

Dear Jim, Beth and Susan,

Hear is my submittal for the next meeting. As I indicate, I'm very interested in how you evaluated suggested revisions from last week's meeting and will be prepared to participate actively as we walk through these sections in light of that knowledge.

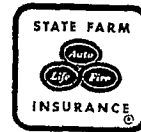
<<Market Conduct Surveillance Model Act - Comments 04-05-06.pdf>>

Onward and Upward,

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4/5/2006

State Farm Insurance Companies



April 5, 2006

The Honorable Mike Kreidler
Insurance Commissioner
State of Washington
5000 Capitol Way
Tumwater, Washington 98501

Re: Comments on Market Conduct Surveillance Model Act
Sections 7, 8 and 9 of Z draft

Dear Commissioner Kreidler,

On behalf of the State Farm Insurance Companies, I am pleased to submit the following with respect to the proposed draft legislation ("Revised Z Draft") which has been distributed by your staff.

First, I would note that I came away from last week's meeting feeling very positive. We engaged in a very frank and substantive discussion on the current Z Draft, of course. Of perhaps greater significance, I think, was opening the general topic of the justification for this bill at this time, its possible price tag, and whether all instances of its proposed deference to the NAIC is sufficiently anchored in clear process and independently significant standard. Finally, I think the topic which was opened on "how extensive" a bill will need to be to support the Commissioner in any NAIC accreditation process was very important as was the clearly shared recognition of how important the confidentiality piece is to the entire discussion.

As the analysis has now turned to sections 7, 8 and 9, it raises the obvious downside to the sequential process we have used in that interested parties cannot "read the bill as a whole" in that we do not know what, if any changes to the prior substantive sections 5 and 6 are being entertained by the Commissioner. Clearly, from a legislative analysis perspective, it is the operation of the measure in all its substantive provisions as they inter-relate which will determine how any industry participant views the final bill draft. This was less of an issue with Sections 5 and 6 since the prior sections, while important, did not contain such extensive and substantive material.

Letter by Kenneth Cooley: Comments on Market Conduct Surveillance Model Act
Sections 7, 8 and 9 of Revised Z draft

As with prior meetings, I look to participate in Tumwater on State Farm's behalf and expect to support the substantive concerns with the sections as drafted which you will in due course receive from AHIP, NAMIC and the PCI. However, at this juncture, State Farm's ability to fairly and thoughtfully provide your Department with additional pertinent comment on Sections 7, 8 and 9 is hampered by uncertainty as to how the Department has concluded to revise Sections 5 and 6. Rather than provide additional State Farm specific commentary at this juncture when the implications of any revisions to the immediately prior substantive provisions is unknown, I will simply plan to provide my comment on Wednesday the 12th in person as I have done to date.

Reflecting on the requested changes at the last meeting, we clearly began zeroing in on how the various elements for which the industry has been advocating – use of reliable, high quality data, assured confidentiality, control of excessive and duplicative costs both internal to the Department and as borne by insurers are all part of a meaningful work product. With the upcoming meeting, these issues continue to be on the table as we focus on whether the proposed legislation will promote a balanced, cost-effective, system of nationwide insurance regulation executed by state-level deference and collaboration among all parties in an environment where reasonable ground rules exist to minimize duplication, constrain excessive or duplicative expense, and ensure a healthy marketplace.

State Farm has been pleased to be an active participant in all phases of the process to date and looks forward to continuing to do so. I anticipate that as Jim Odiome indicated at the close of last week's session that yet another revised Z draft will be available for review prior to next Wednesday's session. That will be exceedingly helpful and I will plan once again to come and provide constructive comments anchored in the most recent draft and the issues which the requested amendments are intending to address.

Sincerely,


Kenneth Cooley

Jim Odiorne

From: Paolino, Catherine [CPaolino@aiadc.org]
Sent: Wednesday, April 05, 2006 2:46 PM
To: Jim Odiorne
Cc: Suchil, Steve; Webster, Cliff; Curry, James; Brenda Davis
Subject: Market Conduct - WA - Z Draft - Sections 7-9

Deputy Commissioner Odiorne -

Kindly see AIA's attached letter and chart relating to Sections 7 through 9 of the OIC's Z draft. Thank you for the opportunity to comment.

<<WA Mkt Conduct - AIA Ltr Secs 7 8 9 - 040506.pdf>> <<WA 032206 Z Comparison w Suggested - Secs 7 8 9 - 040506.pdf>>

Regards,
Cate Paolino

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4/5/2006



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April 5, 2006

VIA EMAIL

Jim Odiorne
Deputy Insurance Commissioner
Washington State Office of Insurance Commissioner
PO Box 40255
Olympia, WA 98504-0255

**Re: Market Conduct Surveillance Model Act
Sections 7-9**

Dear Mr. Odiorne:

The American Insurance Association (AIA)¹ submits this letter in response to the Office of Insurance Commissioner (OIC) request for comments on its Z draft addressing Market Conduct Surveillance. Today's comments focus specifically on Section 7-9. In addition to the comments in this letter, AIA asks that you see the attached side-by-side comparison and the remarks integrated into that document.

AIA worked with a group of other industry representatives to consider NCOIL language, Texas language, and the market conduct surveillance issue overall. This group prepared a Model for consideration as necessary. AIA urges OIC to consider that language. For your ease of comparison, it is shown in the attachment. A summary of specific concerns with the applicable sections follows.

Scope

By framing Chapter 7 to apply only to on-site exams, as defined under Section 4(c)(ii), many of the protections – like an exam work plan under Section 7(3), the post-exam conference under Section 7(8), and a budget under Section 7(11)(b) – will not apply to desk exams. There is no need to differentiate. These items are still relevant even if the work is not being done at the insurer's office. AIA urges this section to apply to all exams and not just to those on-site.

Framework / Deference & Discretion

The formulation of domestic deference in Section 7(2) is weak and the discretion may be too strong to give the concept meaning. If a state has a market conduct surveillance system and if it has examined the insurer for the same issues, Washington's consideration of that report should be mandatory. Domestic deference removes needless duplication, lowers examination expenses for states and insurers, and helps focus review efforts. With domestic deference, the domiciliary state is responsible to monitor their insurers' conduct in the marketplace, but other states are still able to initiate target for cause exams if their market analysis indicates a problem unique to their state which poses potential harm to insurance consumers and was not remedied as a result of the domiciliary state's examination. This will help bring more sense to the diffuse insurance regulatory environment.

¹ Founded in 1866, AIA is a national trade association representing leading property and casualty insurers that write property and casualty insurance throughout the United States and around the world.

The term "extraordinary circumstances" used in Sec. 7(8) is not defined under Sec. (4). If it is going to be the trigger for the Commissioner to bypass advance notice, the specific situations in which it may apply should be clear. Consider a definition based on potential for significant harm to the consumer.

Third Party Material

Together Sections 9(1) and 8(2) require the insurer to provide access to third party models that the insurer may not be authorized to provide or to which they may not have access. Insurers should only have to provide access to information they develop or own.

Procedural Safeguards

Incorporation of NAIC materials should not occur without an opportunity for industry to be heard. This chance to articulate concerns is not assured under the draft bill language. First, Section (7)(5) mandates the NAIC market regulation handbook and uniform market conduct exam procedures are mandated for conduct market conduct examinations; this gives NAIC work product the force of law. Under Section 6(4), it is up to the Commissioner to decide to hold a hearing. Unless that section is changed to require a hearing for any material changes to NAIC work products, they should not be incorporated into law. Second, Section 7(6) references the NAIC's standard data request. Again, industry must be afforded an opportunity to be heard on any changes. Simple incorporation by reference or discretionary hearing does not give adequate opportunity.

Personnel should not be vested with subpoena power in Sec. 8(5). It should reside with the Commissioner. Giving subpoena power to examiners gives them too much authority to access insurer records and systems. This would be complicated when outside consultants are used for market surveillance.

Omitted Items

Again, AIA supports the suggested language shown on the attachment. There are important reasons behind these provisions and we ask for an opportunity for industry to present them. Kindly consider the following:

- The suggested model section 8(d) dealing with the timing and waiver of a comprehensive exam should be included in the Washington bill.
- It appears under Section 7(9)(2) that the commissioner has sole discretion to release a report which is also provided under RCW 48.03.050. This report should be held as confidential. Indeed, such confidentiality is crucial and provisions from suggested model Sec. 8(k) should be included.
- While the confidentiality afforded by self-audit documents in Section 9(3) is important, AIA cannot overemphasize the importance of the voluntary nature of turning over these internal reviews to regulators. The point of the self-audit privilege, like the judicially created attorney/client privilege, is to permit "full and frank" internal discussions about compliance with laws and regulations, and to encourage companies to remedy violations discovered during the audit process. Self-audits serve as a supplement to limited insurance department resources, allowing insurers, in effect, to undertake their own internal market conduct examinations without penalizing insurers for doing so.
- Consider the omission of pattern or practice from Sec. 7(1). Is Washington going to follow a zero tolerance approach to mistakes?
- Section 7(7) should add language from suggested model Sec. 8(g), which provides that insurers should be notified of changes in the targeted exam reasons and should be given a revised work plan.
- The suggested model section 8(c) dealing with post notification of the scheduled exam should be included in the Washington bill.
- A time should be set for the pre-exam conference under Section 7(8), so the insurer may clarify issues that may impact pulling files or providing materials for the exam. At least 30 days notice is needed for the conference to be valuable.
- Suggested model language contained in Sec. 8(j)(1) provide a helpful timeline and should be included directly in this Washington bill under Sec. 7(10(a)).

- o Suggested model language contained in Sec. 8(j)(2) mentioning that an insurer response is not mandatory and that specific individuals should not be named, should be incorporated into Sec. 7(10) of the Washington bill.

Existing Law

Leaving much of RCW 48.03 in place is too complicated, confusing and conflicting. Regulation of market conduct should all be done in one place. For example, is it possible that 48.03.025 dealing with the appointment of examiners may circumvent Sec. 10 of the draft Washington bill? Careful scrutiny of the law may reveal other inconsistencies as well. Consider that the reference to RCW 48.03 in Sec. 7(10)(a) is confusing. RCW 48.03.040 applies to the issuance of examination reports. Under this section the Commissioner has 60 days to make a full written report but no time limit on when the insurer must receive it. Under the suggested model the insurer should receive the written report within 60 days of completion of the exam. Also, RCW 48.03.040 allows the commissioner to only give the insurer between 10 and 30 days to comment unless the commissioner extends the period. The suggested model requires the insurer be given 30 days to respond. Nothing in RCW 48.03.040 requires the Commissioner to make corrections or revise the draft report. The commissioner can adopt as filed. The suggested model requires the commissioner to make corrections and give the insurer 30 days to accept the revised report or ask for alternative dispute resolution. Again, the report language should be part of this law and not separate under 48.03.040. Finally, Section 7(11)(a) ties expenses to RCW 48.03.060, allowing the Commissioner to choose the higher of the NAIC guideline or the WA state guideline and exempting domestic insurers from paying any expenses. The exam fees should be assessed the same for domestic and foreign insurers and tied to one standard rather than a choice between the higher of two standards.

* * * * *

AIA appreciates the opportunity to be involved in the process as OIC considers legislative language on market conduct surveillance. Thank you.

Respectfully,

/s/

Catherine I. Paolino
Senior Counsel
202 – 828 – 7159

Cc: James Curry
Steve Suchil
Cliff Webster

Protocols for Market Conduct Examinations	Suggested Model – January 2006	Washington OIC - 3/22/Z Draft	AIA Comments – 4/5/06
Section 8	(a) When market analysis identifies a pattern of conduct or practice by an insurer which requires further investigation, and other market conduct actions identified in section 6 (c) are not appropriate, the Commissioner has the discretion to conduct targeted market conduct examinations in accordance with the NAIC Market Conduct Uniform Examination Procedures and the Market Conduct Examiners Handbook	Sec. 7 [On-Site Market Conduct Examinations]	<p>Overall – By framing Chapter 7 to apply only to on-site exams, as defined under Sec. 4(c)(ii), many of the protections – like an exam work plan, the post-exam conference, and a budget – will not apply to desk exams. There is no need to differentiate. A work plan and budget are still relevant even if the work is not being done at the insurer's site. AIA urges this section to apply to all exams and not just to those on-site.</p> <p>Leaving much of RCW 48.03 is too complicated and confusing. Regulation of market conduct should all be done in one place.</p>
(b) If the insurer to be examined is not a domestic insurer, the Commissioner shall coordinate the examination with the insurance Commissioner of the state in which the insurer is organized.	(1) When the commissioner determines that other market conduct actions identified in sections 5(4)(a) of this act are not appropriate, the commissioner has the discretion to conduct on-site market conduct examinations in accordance with the NAIC market conduct uniform examination procedures and the NAIC market regulation handbook. RCW 48.03.010 shall not apply to market conduct examinations. However, in all other respects, chapter 48.03 RCW shall apply to market conduct examinations.	(2) In lieu of an examination of a foreign or alien insurer licensed in this state under this chapter, the commissioner may accept an examination report of another state provided that the state has a market surveillance system the commissioner deems comparable to the market conduct surveillance system set forth in this law.	<p>Consider the omission of pattern or practice from Sec. 7(1). Is Washington going to follow a zero tolerance approach to mistakes?</p> <p>References to RCW 48.03 are confusing and deserve close review. For example, is it possible that 48.03.025 dealing with the appointment of examiners may circumvent Sec. 10 of the draft Washington bill? Again, careful scrutiny of the law may reveal other inconsistencies as well.</p>
			<p>This formulation of domestic deference in Sec. 7(2) is weak and the discretion too strong. If a state has a market conduct surveillance system and has examined the insurer for the same issues, Washington's consideration of that report should be mandatory.</p>

<p>(c) Concomitant with the notification requirements established in subsection (f) of this section, the commissioner shall post notification on the NAIC Examination Tracking System or successor NAIC product as determined by the commissioner, that a market conduct examination has been scheduled.</p>		<p>The suggested model section 8(c) dealing with post notification of the scheduled exam should be included in the Washington bill.</p>
<p>(d) The Commissioner may not conduct a comprehensive market conduct examination more frequently than once every five years. The Commissioner may waive conducting a comprehensive market conduct examination based on market analysis.</p>		<p>The suggested model section 8(d) dealing with the timing and waiver of a comprehensive exam should be included in the Washington bill.</p>
<p>(a) (1) Prior to commencement of an examination, market conduct surveillance personnel shall prepare a work plan consisting of the following:</p> <p>(A) The name and address of the insurer(s) being examined;</p> <p>(B) The name and contact information of the examiner-in-charge;</p> <p>(C) The justification(s) for a targeted examination;</p> <p>(D) The scope of an examination;</p> <p>(E) The date the on-site examination is scheduled to begin;</p> <p>(F) Identification of any non-insurance department personnel who will assist in the examination;</p> <p>(G) A time estimate for the examination;</p> <p>(H) A budget for the examination if the cost of the examination is billed to company; and</p> <p>(I) An identification of factors that will be included in the billing if the cost of the examination is billed to company.</p>	<p>(3) Before commencement of an on-site examination, market conduct surveillance personnel shall prepare a work plan consisting of the following:</p> <p>(a) The name and address of the insurer(s) being examined;</p> <p>(b) The name and contact information of the examiner-in-charge;</p> <p>(c) The justification(s) for a targeted, on-site examination;</p> <p>(d) The scope of an examination;</p> <p>(e) The date the on-site examination is scheduled to begin;</p> <p>(f) Identification of any non-insurance department personnel who will assist in the examination;</p> <p>(g) A time estimate for the on-site examination;</p> <p>(h) A budget for the examination if the cost of the examination is billed to the insurer; and</p> <p>(i) An identification of factors that will be included in the billing if the cost of the examination is billed to insurer.</p>	<p>The work plan in Sec. 7(3) should not be limited to on-site exams, but should apply to all exams.</p>
<p>(2) An examination may be conducted through a desk examination or an on-site examination. Examinations shall, to the extent feasible, utilize desk examinations and data requests prior to an on-site examination.</p>	<p>(4) Market conduct examinations shall, to the extent feasible, use desk examinations and data requests before an on-site examination.</p>	

		<p>(5) Market conduct examinations shall be conducted in accordance with the provisions set forth in the <u>NAIC market regulation handbook and the NAIC market conduct uniform examinations procedures</u>.</p>	<p>Section 7(5) mandates the NAIC market regulation handbook and uniform market conduct exam procedures are mandated for conduct market conduct examinations; this gives NAIC work product the force of law. Industry should be provided an opportunity to be heard. Under Section 6(4), it is up to the Commissioner to decide to hold a hearing. Unless that section is changed to require a hearing for any material changes to NAIC work products, they should not be incorporated into law.</p>
	<p>(3) The department shall use the NAIC Standard Data Request (or successor product, adopted by regulation, that is substantially similar to the foregoing NAIC product).</p>	<p>(6) The commissioner shall use the NAIC standard data request.</p>	<p>Section 7(6) references the NAIC's standard data request. Again, industry must be afforded an opportunity to be heard on any changes. Simple incorporation by reference or discretionary hearing does not give adequate opportunity.</p>
<p>(f) Announcement of the examination shall be sent to the insurer and posted on the NAIC's <i>Examination Tracking System</i> (or successor NAIC product, as determined by the commissioner) as soon as possible but in no case later than 60 days before the estimated commencement of an examination, except where the exam is conducted in response to extraordinary circumstances as described in Section 7(b)(1). Such announcement sent to the insurer shall contain the examination work plan and a request for the insurer to name its examination coordinator.</p> <p>(g) If a targeted examination is expanded beyond the reasons provided to the insurer in the notice of the examination required under this Section, the Commissioner shall provide written notice to the insurer, explaining the extent of the expansion and the reasons for the expansion. The department shall provide a revised work plan to the insurer before the beginning of any significantly expanded examination.</p>	<p>(7) Announcement of the examination shall be sent to the insurer and posted on the NAIC's <i>Examination Tracking System</i> (or successor NAIC product, as determined by the commissioner) as soon as possible but in no case later than 60 days before the estimated commencement of an examination, except where the exam is conducted in response to extraordinary circumstances as described in Section 6(2)(a) of this act. The announcement sent to the insurer shall contain the examination work plan and a request for the insurer to name its examination coordinator.</p>	<p>The term "extraordinary circumstances" used in Sec. 7(8) is not defined under Sec. (4). If it is going to be the trigger for the Commissioner to bypass advance notice, the situations in which it may apply should be clear. Consider a definition based on potential for significant harm to the consumer.</p> <p>Section 7(7) should add language from suggested model Sec. 8(g), which provides that insurers should be notified of changes in the targeted exam reasons and should be given a revised work plan.</p>	

	(h) The Commissioner shall conduct a pre-examination conference with the insurer examination coordinator and key personnel to clarify expectations no later than thirty (30) days prior to commencement of the examination.	(8) The Commissioner shall conduct a pre-examination conference with the insurer examination coordinator and key personnel to clarify expectations before commencement of the examination.	A time should be set for the pre-exam conference under Sec. 7(8), so the insurer may clarify issues that may impact pulling files or providing materials for the exam. At least 30 days notice is needed for the conference to be valuable.
	(i) Prior to the conclusion of an examination, the individual among the market conduct surveillance personnel who is designated as the examiner-in-charge shall schedule an exit conference with the insurer.	(9) Before the conclusion of the field work for an on-site market conduct examination, the individual from the market conduct surveillance personnel who is designated as the examiner-in-charge shall schedule an exit conference with the insurer.	The exam conference in Sec. 7(3) should not be limited to on-site exams, but should apply to all exams. By designating the end of the field work as the applicable time, the discussion may be premature as OIC may not yet have determined the applicable findings.

(i) (1) The commissioner shall adhere to the following timeline, unless a mutual agreement is reached with the insurer to modify the timeline:

(A) If the Commissioner elects to issue a report, a draft examination report shall be delivered to the insurer within sixty (60) days of the completion of the examination. Completion of the examination shall be defined as the date the Commissioner confirms in writing that the examination is completed.

(B) The insurer must respond with written comments within 30 days of receipt of the draft report.

(C) The department shall make a good faith effort to resolve issues informally and where the Commissioner determines that such examination report is required, shall prepare a final report within 30 days of receipt of the insurer's written comments, unless a mutual agreement is reached to extend the deadline.

(D) The commissioner shall make corrections and other changes, as appropriate to reflect resolution of disputed matters, and shall issue the report to the insurer. The insurer shall, within 30 days, accept the final report, accept the findings of the report, file written comments, request an alternative dispute resolution under Section 11 or request a hearing. An additional 30 days shall be allowed if agreed to by the Commissioner and the insurer. Any such hearing request must be made in writing and must follow insert reference to appropriate administrative procedure act.

(1) States shall include the company's response in the final report. The response may be included as an appendix or in the text of the examination report.

The company is not obligated to submit a response. Individuals involved in the examination should not be named in either the report or the response except to acknowledge their involvement.

(10)(a) The commissioner shall adhere to the requirements of chapter 48.03 RCW concerning issuance of market conduct examination reports.

The reference to RCW 48.03 in Sec. 7(10)(a) is confusing. RCW 48.03.040 applies to the issuance of examination reports. Under this section the Commissioner has 60 days to make a full written report but no time limit on when the insurer must receive it. Under the suggested model the insurer should receive the written report within 60 days of completion of the exam. Also, RCW 48.03.040 allows the commissioner to only give the insurer between 10 and 30 days to comment unless the commissioner extends the period. The suggested model requires the insurer be given 30 days to respond. Nothing in RCW 48.03.040 requires the Commissioner to make corrections or revise the draft report. The commissioner can adopt as filed. The suggested requires the commissioner to make corrections and give the insurer 30 days to accept the revised report or ask for alternative dispute resolution. Again, the report language should be part of this law and not separate under 48.03.040.

Suggested model language contained in Sec. 8(j)(1) provide a helpful timeline and should be included directly in this Washington bill under Sec. 7(10)(a).

(b) The insurer's response shall be included in the commissioner's order adopting the final report as an exhibit to the order. The insurer is not obligated to submit a response.

Suggested model language contained in Sec. 8(j)(2) mentioning that an insurer response is not mandatory and that specific individuals should not be named, should be incorporated into Sec. 7(10) of the Washington bill.

<p>(k)(1) Upon adoption of the examination report pursuant to subsection (j), the Commissioner shall continue to hold the content of the examination report as private and confidential, except to the extent provided for in paragraph (2) of this subsection. Documents and information obtained during an alternative dispute resolution under Section 9, and the results of such action, shall be afforded the same protection. No such report or information shall be subject to subpoena and shall not be subject to discovery or admissible in evidence in any private action. This section may not be construed to limit the Commissioner's authority to use any final or preliminary market conduct examination report, any examiner or company work papers or other documents, or any other information discovered or developed during the course of an examination in the furtherance of any legal or regulatory action that the Commissioner, in the Commissioner's sole discretion, may deem appropriate.</p>	<p>(9)(2) If the commissioner elects to issue a report of an examination, a preliminary or draft market conduct examination report is confidential and not subject to disclosure by the commissioner nor is it subject to subpoena or discovery. This subsection does not limit the commissioner's authority to use a preliminary or draft market conduct examination report and related information in furtherance of any legal or regulatory action, or to release it in accordance with the provisions of RCW 48.02.065.</p>	<p>It appears under Sec. 7(9)(2) that the commissioner has sole discretion to release a report which is also provided under RCW 48.03.050. This report should be held as confidential. Indeed, such confidentiality is crucial and provisions from suggested model Sec. 8(k) should be included in the Washington bill.</p>
<p>(2) Nothing contained in this Act shall prevent or be construed as preventing the commissioner from disclosing the content of an examination report, preliminary examination report or results, or any matter relating thereto, to the insurance department of this or any other state or agency of the federal government at any time, provided the agency or office receiving the report or matters relating thereto agrees to hold it confidential and in a manner consistent with this Act.</p>	<p>(11)(a) The reasonable and necessary costs of a market conduct examination may be assessed against the insurer under examination. The fees shall be consistent with that otherwise authorized by RCW 48.03.060. The fees shall be itemized and bills shall be provided to the insurer on a monthly basis for review prior to submission for payment, or as otherwise provided by state law.</p>	<p>Sec. 7(11)(a) ties expenses to RCW 48.03.060, allowing the Commissioner to choose the higher of the NAIC guideline or the WA state guideline and exempting domestic insurers from paying any expenses. The exam fees should be assessed the same for domestic and foreign insurers and tied to one standard rather than a choice between the higher of two standards.</p>
<p>(3) The Commissioner shall provide to an insurer subject to a final market conduct examination a written agreement described by Subsection (2) not later than the fifth day after the date the final market conduct examination is released under Subsection (2).</p>	<p>(1) (1) Where the reasonable and necessary costs and fees of a market conduct examination are to be assessed against the insurer under examination, such costs and fees shall be consistent with that otherwise authorized by law. Such costs and fees shall be itemized and bills shall be provided to the insurer on at least a monthly basis for review prior to submission for payment.</p>	<p>(1) (1) Where the reasonable and necessary costs and fees of a market conduct examination are to be assessed against the insurer under examination, such costs and fees shall be consistent with that otherwise authorized by law. Such costs and fees shall be itemized and bills shall be provided to the insurer on at least a monthly basis for review prior to submission for payment.</p>

<p>(2) The Commissioner shall maintain active management and oversight of examination costs and fees, including, but not limited to, costs and fees associated with the use of department personnel and examiners and with retaining qualified contract examiners necessary to perform an examination. To the extent the Commissioner retains outside assistance, the Commissioner must have in writing protocols that:</p> <p>(A) Clearly identify the types of functions to be subject to outsourcing;</p> <p>(B) Provide specific timelines for completion of the outsourced review;</p> <p>(C) Require disclosure of contract examiners' recommendations;</p> <p>(D) Establish and utilize a dispute resolution or arbitration mechanism to resolve conflicts with insurers regarding examination fees; and</p> <p>(E) Require disclosure of the terms of the contracts with the outside consultants that will be used, specifically the fees and/or hourly rates that can be charged.</p>	<p>(b) The commissioner shall maintain active management and oversight of examination costs, including costs associated with the commissioner's own examiners, and with retaining qualified contract examiners necessary to perform an on-site examination. Any agreement with a contract examiner shall:</p> <p>(i) Clearly identify the types of functions to be subject to outsourcing;</p> <p>(ii) Provide specific timelines for completion of the outsourced review;</p> <p>(iii) Require disclosure of contract examiners' recommendations;</p> <p>(iv) Establish and utilize a dispute resolution or arbitration mechanism to resolve conflicts with insurers regarding examination fees; and</p> <p>(v) Require disclosure of the terms of the contracts with the outside consultants that will be used, specifically the fees and/or hourly rates that can be charged.</p>	<p>The expense management in Sec. 11(b) should not be limited to on-site exams, but should apply to all exams.</p>
<p>(1) The Commissioner shall review and affirmatively endorse detailed billings from the qualified contract examiner before the detailed billings are sent to the insurer.</p>	<p>(c) The commissioner, or the commissioner's designee, shall review and affirmatively endorse detailed billings from the qualified contract examiner before the detailed billings are sent to the insurer.</p>	
<p>(2) The Commissioner may contract in accordance with applicable state contracting procedures, for such qualified contract actuaries and examiners as the Commissioner deems necessary due to the unavailability of qualified regular state employees to conduct a particular examination; provided that the compensation and per diem allowances paid to such contract persons shall not exceed one hundred twenty-five percent (125%) of the compensation and per diem allowances for examiners set forth in the guidelines adopted by the National Association of Insurance Commissioners.</p>		
<p>(3) An insurer may not be required to provide reimbursement for examination costs and fees under Subsection (1), whether those costs and/or fees are incurred by market conduct surveillance personnel or qualified contract examiners, to the extent that those costs and/or fees exceed the costs and/or fees prescribed in the Market Conduct Examiners Handbook and any successor documents to that Handbook unless the Commissioner demonstrates that the costs and/or fees prescribed in the Handbook are inadequate under the circumstances of the examination.</p>		

Confidentiality Requirements		Section 9	Sec. 8 [Access to Records and Information] Sec. 9 [Confidentiality]	
	(a) Except as otherwise provided by law, market conduct surveillance personnel shall have free and full access to all books and records, employees, officers and directors, as practicable, of the insurer during regular business hours....	(a) Except as otherwise provided by law, market conduct surveillance personnel shall have free and full access to all books and records, employees, officers and directors, as practicable, of the insurer during regular business hours....	(8)(1) Except as otherwise provided by law, market conduct surveillance personnel shall have free and full access to all books and records, employees, officers, and directors, as practicable, of the insurer during regular business hours.	
	... All documents, including but not limited to working papers, complaint logs, and copies thereof, created, produced or obtained by or disclosed to the Commissioner or any other person in the course of any market conduct actions made pursuant to this Act, or in the course of market analysis by the commissioner of the market conditions of an insurer, or obtained by the NAIC as a result of any of the provisions of this Act, shall be confidential by law and privileged, shall not be subject to subpoena and shall not be subject to discovery or admissible in evidence in any private civil action.	... All documents, including but not limited to working papers, complaint logs, and copies thereof, created, produced or obtained by or disclosed to the Commissioner or any other person in the course of any market conduct actions made pursuant to this Act, or in the course of market analysis by the commissioner of the market conditions of an insurer, or obtained by the NAIC as a result of any of the provisions of this Act, shall be confidential by law and privileged, shall not be subject to subpoena and shall not be subject to discovery or admissible in evidence in any private civil action.	(9)(1) All data and documents, including but not limited to working papers, third-party models or products, complaint logs, and copies thereof, created, produced or obtained by or disclosed to the commissioner, the commissioner's authorized representative, or an examiner appointed by the commissioner in the course of any market conduct actions or examinations made pursuant to this chapter, or in the course of market analysis by the commissioner of the market conditions of an insurer, or obtained by the NAIC as a result of any of the provisions of this chapter, shall be confidential by law and privileged, shall not be subject to the provisions of chapters 42-17 and 42-56 RCW, shall not be subject to subpoena and shall not be subject to discovery or admissible in evidence in any private civil action.	Together Sections 9(1) and 8(2) require the insurer to provide access to third party models that the insurer may not be authorized to provide or to which they may not have access. Insurers should only have to provide access to information they develop or own.
			(8)(2) An insurer using a third-party model or product for any of the activities under examination shall cause, upon the request of market conduct surveillance personnel, the details of such models or products to be made available to such personnel.	Together Sections 9(1) and 8(2) require the insurer to provide access to third party models that the insurer may not be authorized to provide or to which they may not have access. Insurers should only have to provide access to information they develop or own.
	(b) No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information shall occur as a result of disclosure to the Commissioner under this section.	(b) No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information shall occur as a result of disclosure to the commissioner under this section.	(8)(3) Each officer, director, employee, and agent of an insurer shall facilitate and aid in a market conduct action or examination. (8)(4) No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information shall occur as a result of disclosure to the commissioner under this section.	

	<p>(c) Market conduct surveillance personnel shall be vested with the power to issue subpoenas and examine insurance company personnel under oath when such action is ordered by the Commissioner pursuant to (cite the appropriate state authority).</p>	<p>(8)(5) Market conduct surveillance personnel shall be vested with the power to issue subpoenas and examine insurance company personnel under oath when such action is ordered by the commissioner under RCW 48.03.070.</p>	<p>Personnel should not be vested with subpoena power in Sec. 8(5). It should reside with the Commissioner. Giving subpoena power to examiners gives them too much authority to access insurer records and systems. This would be complicated when outside consultants are used for market surveillance.</p>
	<p>(d) Notwithstanding the provisions of paragraph (a) of this subsection, in order to assist in the performance of the Commissioner's duties, the Commissioner may:</p> <p>(1) Share documents, materials or other information, including the confidential and privileged documents, materials or information subject to paragraph (a), with other state, federal and international regulatory agencies and law enforcement authorities and the NAIC and its affiliates and subsidiaries, provided that the recipient agrees to and has the legal authority to maintain the confidentiality and privileged status of the document, material, communication or other information;</p> <p>(2) Receive documents, materials, communications or information, including otherwise confidential and privileged documents, materials or information, from the NAIC and its affiliates or subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or information; and</p> <p>(3) Enter into agreements governing the sharing and use of information consistent with this subsection.</p>	<p>(8)(6) Notwithstanding the provisions of subsection (1) of this section, in order to assist in the performance of the commissioner's duties, the commissioner may:</p> <p>(a) Share documents, materials or other information, including the confidential and privileged documents, materials or information subject to subsection (1), with other state, federal and international regulatory agencies and law enforcement authorities and the NAIC and its affiliates and subsidiaries, provided that the recipient agrees to and has the legal authority to maintain the confidentiality and privileged status of the document, material, communication or other information;</p> <p>(b) Receive documents, materials, communications or information, including otherwise confidential and privileged documents, materials or information, from the NAIC and its affiliates or subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or information; and</p> <p>(c) Enter into agreements governing the sharing and use of information consistent with this subsection.</p>	

(c) Notwithstanding the provisions of this section, no insurer shall be compelled to disclose a self-audit document or waive any statutory or common law privilege, but may voluntarily disclose such document to the Commissioner in response to any market conduct action or examination as provided in this section. For purposes of this subsection, "self-audit document" means a document that is prepared as a result of or in connection with an insurance compliance audit.

(9)(3) An insurance compliance self-evaluative audit document that has been provided to the commissioner is confidential by law and privileged, shall not be:

- (a) Made public by the commissioner;
- (b) Subject to the provisions of chapters 42.17 and 42.56 RCW;
- (c) Subject to subpoena; and
- (d) Subject to discovery and admissible in evidence in any private civil action.

(4) The disclosure of any self-evaluative audit document to the commissioner or the commissioner's designee shall not constitute a waiver of any privilege that may otherwise apply.

While the confidentiality afforded by self-audit documents in Sec. 9(3) is important, AIA cannot overemphasize the importance of the voluntary nature of turning over these internal reviews to regulators. The point of the self-audit privilege, like the judicially created attorney/client privilege, is to permit "full and frank" internal discussions about compliance with laws and regulations, and to encourage companies to remedy violations discovered during the audit process. Self-audits serve as a supplement to limited insurance department resources, allowing insurers, in effect, to undertake their own internal market conduct examinations without penalizing insurers for doing so.

Jim Odiorne

From: kenton.brine@pciaa.net
Sent: Wednesday, April 05, 2006 3:51 PM
To: Jim Odiorne
Cc: Beth Berendt; sorensen@carneylaw.com
Subject: Fw: PCI Sections 7,8 and 9 Comments

Jim -

Please see below PCI's comments Sections 7, 8 and 9 of the OIC's draft legislation on market analysis, prepared by Don Cleasby, PCI Vice President, Regional Manager and Counsel. Please let me know if you need further information on PCI's comments.

Thank you.

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April 5, 2006

Mr. Jim Odiorne
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Re: Draft Legislation on Market Regulation and Surveillance, Sections 7, 8 and 9

Dear Mr. Odiorne:

This email provides continued comments from the Property Casualty Insurers Association of America (PCI) to the Department's Z draft Market Regulation and Surveillance Model Law. As requested, these comments are limited to Sections 7,8 and 9 of the draft.

SECTION 7

Throughout **Section 7** there are references to on-site market conduct examinations. The PCI urges the Department to stay true to the spirit and intent of the Market Conduct Surveillance Model Law which is to move away from routine, more expensive and more burdensome on-site examinations and towards less burdensome and less costly alternative market conduct actions. Mandating on-site examinations is inconsistent with this. We

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recommend that references to on-site examinations in Section 7 (1), (3), (7) and (9) be replaced with reference to targeted examinations. This will not preclude an on-site examination since the definition of "targeted examination" expressly includes reference to on-site examinations.

The PCI applauds the language in **Section 7 (1)** removing statutory requirements for periodic or regular examinations.

In **Section 7 (2)**, the "may" should be replaced with "shall". Furthermore, language should be added that in addition to finding that the other state has a surveillance system comparable to that of Washington's, the other state must also have laws substantially similar to those of Washington. The change from "may" to "shall" does not deny the commissioner's use of discretion to determine that these two prequalifications are satisfied. It is only once the commissioner determines that both prequalifications are met that he or she must then accept the examination report of the other state. We recommend that Section 7 (2) read: In lieu of an examination of a foreign or alien insurer licensed in this state under this chapter, the commissioner shall accept an examination report of another state provided that the state has laws substantially similar to those of this state and a market surveillance system that the commissioner deems comparable to the market surveillance system set forth in this law.

Section 7 needs a **separate paragraph** requiring notice to the insurer if the scope of the targeted examination expands. PCI members mentioned that at times an examination takes a course completely unrelated to that originally announced and yet the insurer is not given any new work plan or opportunity to prepare. We recommend a new paragraph reading: If a targeted examination is expanded beyond the reasons provided to the insurer in the notice of the examination required under this Section, the Commissioner shall provide written notice to the insurer, explaining the extent of the expansion and the reasons for the expansion. The department shall provide a revised work plan to the insurer before the beginning of any significantly expanded examination.

The NAIC market conduct uniform examination procedures set forth uniform standards for the issuance of examination reports. To the extent that the procedures of 48.03 RCW referenced in **Section 7 (10)** are different, Washington will not be in compliance with the uniform standards. In addition, it seems to add an internal conflict in the statute since earlier in the Act (Section 7 [5]) there is reference that procedures shall follow the NAIC market conduct uniform examination procedures.

The PCI is pleased to see language in **Section 7 (10)(b)** requiring the insurer's response to the examination, if any, to be included as an exhibit to the final report.

We also are pleased with the language dealing with oversight of qualified contract examiner charges in **Section 7 (11)**. One of the primary concerns PCI members have with the market examination process are the substantially higher costs associated with contract examiners. Indeed, this concern is so great that we want the Washington statute to have even greater safeguards. We recommend **two new paragraphs** in Section 7. The first would read: The Commissioner may contract in accordance with applicable state contracting procedures, for such qualified contract actuaries and examiners as the Commissioner deems necessary due to the unavailability of qualified regular state employees to conduct a particular examination; provided that the compensation per diem allowance paid to such contract persons shall not exceed one hundred twenty-five percent (125%) of the compensation and per diem allowances for examiners set forth in the guidelines adopted by the National Association of Insurance Commissioners. The second new paragraph would read: An insurer may not be required to provide reimbursement for examination costs and fees under Paragraph (1), whether those costs and/or fees are incurred by market conduct surveillance personnel or qualified contract examiners, to the extent that those costs and/or fees exceed the costs and/or fees prescribed in the Market Conduct Examiners Handbook and any successor documents to the Handbook unless the Commissioner demonstrates that the costs and/or fees prescribed in the Handbook are inadequate under the circumstances of the examination.

SECTION 8

As mentioned in previous comments, the PCI does not believe that this model should be used to assert regulatory authority over third-party models or products. If an insurer is improperly using such models or products, use of such models or products is resulting in violations of the Insurance Code or failure to produce such models or products precludes the Department from exercising its appropriate regulatory authority, the recourse is against the insurer. We recommend deletion of **Section 8 (2)**.

On the other hand, we applaud the recognition in **Section 8 (6) (a)** that not only must other entities agree to maintain information as confidential, they must also have the legal authority to do so. An agreement to maintain confidentiality is useless if there is no legal authority to honor that agreement.

SECTION 9

The reference to third party models or products in **Section 9 (1)** should be deleted.

Section 9 (2) maintains as confidential only preliminary or draft examination reports. Examination reports, whether preliminary or final, contain sensitive information about a company's operations, some of which may be in the realm of trade secret. Confidentiality, therefore, should extend to final reports as well. Obviously, regulators and law enforcement should have access to these final reports in order to exercise their appropriate regulatory or law enforcement duties. But if the report is released, the impacted insurer should be provided notice in order to take any legal action it deems warranted given the release of the information. The PCI recommends that the current Section 9 (2) be rewritten to read: (1) Upon adoption of the examination report pursuant to (cite appropriate section in the legislation), the Commissioner shall continue to hold the content of the examination report as private and confidential, except to the extent provided for in paragraph (2) of this subsection.

Documents and information obtained during an alternative dispute resolution (editor's note: to be discussed by PCI in a subsequent comment statement) under (cite appropriate section in the legislation), and the results of such action, shall be afforded the same protection. No such report or information shall be subject to subpoena and shall not be construed to limit the Commissioner's authority to use any final or preliminary market conduct examination report, any examiner or company work papers or other documents, or any other information discovered or developed during the course of an examination in the furtherance of any legal or regulatory action that the Commissioner, in the Commissioner's sole discretion may deem appropriate. (2) Nothing contained in the Act shall prevent or be construed as preventing the commissioner from disclosing the content of an examination report, preliminary examination report or results, or any matter relating thereto, to the insurance department of this or any other state or agency of the federal government at any time, provided the agency or office receiving the report or matters relating thereto agrees to hold it confidential and in a manner consistent with this Act. (3) The Commissioner shall provide to an insurer subject to a final market conduct examination a written agreement described by paragraph (2) not later than the fifth day after the date the final market conduct examination is released under paragraph (2).

The provisions in **Section 9 (3)** should expressly state that release of any self-evaluative audit document is at the sole discretion of the insurer and no insurer shall be compelled to disclose such a document. Requiring disclosure could have a chilling effect on an insurer's willingness to conduct such audits.

As always, the PCI appreciates this continued opportunity to comment on the draft. Feel free to contact either myself or Kenton Brine should you have any questions.

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Property Casualty Insurers Association of America

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